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10/571,999

05/10/2006

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EXAMINER

WALKER, NED ANDREW

ART UNIT

PAPER NUMBER

3781

MAIL DATE

DELIVERY MODE

01/16/2009

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

| | | | |
|------------------------------|--------------------------------------|---------------------------------------|--|
| Office Action Summary | Application No. 10/571,999 | Applicant(s) ALVARES ET AL. | |
| | Examiner NED A. WALKER | Art Unit 3781 | |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-10 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-10 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 09 March 2006 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. ____.
 3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. ____. |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>03/09/06</u> . | 6) <input type="checkbox"/> Other: ____. |

DETAILED ACTION

Drawings

1. New corrected drawings in compliance with 37 CFR 1.84 and 37 CFR 1.121 are required in this application because:

The drawings are improper because they contain center lines. Views must not be connected by projection lines and must not contain center lines. Refer to 37 CFR 1.84(h). See Figure(s) 1-5.

The drawings contain an exploded view(s) missing bracket(s). Exploded views, with the separated parts embraced by a bracket, to show the relationship or order of assembly of various parts are permissible. When an exploded view is shown in a figure which is on the same sheet as another figure, the exploded view should be placed in brackets. Refer to 37 CFR 1.84(h)(1). See Figure(s) 2.

The drawing sheet numbering is formatted improperly. The drawing sheet numbering must be clear and larger than the numbers used as reference characters to avoid confusion. Refer to 37 CFR 1.84(t). See pages 1-5.

2. Applicant is advised to employ the services of a competent patent draftsman outside the Office, as the U.S. Patent and Trademark Office no longer prepares new drawings. The corrected drawings are required in reply to the Office action to avoid abandonment of the application. The requirement for corrected drawings will not be held in abeyance.

Specification

3. The title of the invention is not descriptive. A new title is required that is clearly indicative of the invention to which the claims are directed. The title should include at least one technical or inventive feature set forth in the application.

Claim Rejections - 35 USC § 112

4. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

5. Claims 1-10 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

6. The preamble contains indefinite claim language comprising "for a can of the type." Appropriate correction is required.

7. Claim 1 defines the scope of the lid in terms of the lid's relationship to various parts of the can such as "comprising a sealing portion to be removably and hermetically seated on the seat"; however, the claim does not explicitly define a lid and can in combination. The claim must be amended to positively recite the combination or the features of the lid must be defined by other explicit means.

8. Claims 1, 2, and 5 use the term "latter", which is inexplicit and unclear. Please replace "latter" with the actual term that is being referred to in order to provide clarity. Appropriate correction is required.

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9. Claim 2 is ambiguous because it is unclear which feature is “presenting substantially the same cross section contour...”. Please clarify if it is the feature that latter should be replaced with or another feature.

10. Claims 2-10 are rejected for incorporating the errors from their respective parent claim by dependency.

Claim Rejections - 35 USC § 102

11. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

12. Claims 1-10 are rejected under 35 U.S.C. 102(b) as being anticipated by Robinson et al. (US Pat. No. 4,066,181).

Regarding claims 1 and 2, Robinson et al. discloses a closing arrangement for a can (12) of the type which comprises: a tubular body (12) having a closed lower end and an open upper end provided with a seat (FIG. 3); and a lid in a single piece of plastic material (column 1 lines 31-32), comprising a sealing portion (10) to be removably and hermetically seated on the seat (FIGS 3-5), and projecting radially outwardly from the latter (FIGS. 1-3); and a seal (46) axially breakable in a region of its circumferential extension and which presents a lower skirt to be tightly seated around the upper end of the tubular body (FIG. 3), and an upper edge internally incorporated to the sealing portion by means of breakable radial bridges (connections across 43) which are ruptured when submitted to a certain pulling force for separating the seal from the

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sealing portion upon the first opening of the lid (FIG. 5), wherein the upper end of the tubular body, around which is seated the lower skirt of the seal, presents a cross section contour that is smaller than the largest cross section contour of the remainder of the tubular body, so that the contour of the lid is maintained internal to said largest cross section contour of the tubular body, avoiding the mutual contact of the lids of two adjacent cans disposed side by side (FIGS. 1, 3, 6); wherein the upper end of the tubular body is defined in an upper portion of the latter presenting substantially the same cross section contour as the upper end and a height that is larger than the height of the lower skirt of the seal (FIGS. 1, 3, 6); wherein the tubular body comprises a basic portion defined below the upper portion and which is inferiorly limited by the lower end of the tubular body (FIGS. 1, 3, 6); wherein the basic portion of the tubular body presents a cross section contour that is substantially constant and larger than that of the upper portion (FIGS. 1, 3, 6); wherein the upper portion of the tubular body is united to the basic portion of the latter by a transition portion, whose cross section profile is defined by two upwardly converging straight line segments (FIGS. 1, 3, 6); wherein the tubular body further comprises an annular upper wall having an external edge which is double seamed to the upper end of the tubular body, and an internal edge defining the seat for the seating of the sealing portion of the lid (FIGS. 1, 3, 6).

Applicant is reminded that Claim preamble language may not be treated as a limitation where it merely states an intended use of the system and is unnecessary to define the invention, (*Catalina Marketing Int'l Inc. v. Coolsavings. com Inc., Fed. Cir., No. 01-1324, 5/8/02*). Furthermore, a claim containing a recitation with respect to the

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manner in which a claimed apparatus is intended to be employed does not differentiate the claimed apparatus from a prior art apparatus if the prior apparatus teaches all the structural limitation of the claims (*In re Schreiber*, 128 F.3d 1473, 1477-78, 44 USPQ2d, 1429, 1431-2 (Fed. Cir. 1997); Hewlett-Packard Co. v. Bausch & Lomb Inc., 909 F.2d 1464, 1469, 15 USPQ2d 1525, 1528 (Fed. Cir. 1990); Ex parte Masham, 2 USPQ 2d 1647 (Bd. Pat. App. & Inter. 1987)).

Conclusion

13. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

14. Any inquiry concerning this communication or earlier communications from the examiner should be directed to NED A. WALKER whose telephone number is (571)270-3545. The examiner can normally be reached on Monday - Friday 7:30 AM - 5:00 PM EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Anthony Stashick can be reached on 571-272-4561. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

NW

/Anthony D Stashick/
Anthony D Stashick
Supervisory Patent Examiner, Art Unit 3781